

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

TOWN OF PITTSFORD, TOWN OF BRIGHTON,
and TOWN OF PERINTON,

Petitioners,

REPLY AFFIDAVIT

vs.

Index No. 2018-945

POWER AUTHORITY OF THE STATE OF NEW
YORK and NEW YORK STATE CANAL
CORPORATION,

Assigned to:
Hon. Daniel G. Barrett

Respondents.

STATE OF NEW YORK)
COUNTY OF MONROE) ss:

PETER J. SCHROTH, being duly sworn, deposes and says:

1. I own the premises located at 55 Garden Drive in the Town of Perinton, north of the Ayrault Road bridge over the Erie Canal. I have lived there with my wife and children for about 15 years.

2. The rear of my property abuts the property of respondent New York State Canal Corporation (“Canal Corporation”) along the canal.

3. Surveyors acting on behalf of the Canal Corporation have marked the border of my property line abutting the Canal Corporation property, and designated the removal of all of the trees and shrubs from about 20 feet from my property border to the top of the embankment at the canal path. There is a slight slope from my property up to the top of the canal bank.

4. The proposed clear-cutting will harm my use and enjoyment of my property. I know from construction work I have done on my property that the soil on my land erodes easily, and I fully expect that after the trees are removed from the embankment, soil and water will erode onto my property. I enjoy the beauty of the woods that those trees provide, and if they are all cut down, I will lose that visual resource, as well as a barrier to unwanted noise from those who use the canal and the path. The canal path is heavily trafficked, and with the loss of the trees between the embankment and my house and yard, I will suffer a tremendous loss of privacy. That loss of privacy will translate into a reduction of the market value of my property. I also enjoy the deer, fox, and other wildlife I see in those woods, and all of that will be displaced if the trees are gone.


5. In my opinion, none of this loss is justified. The woods behind my land do not have to be decimated in order to inspect the embankment for structural deficiencies. If deficiencies are found after inspection, trees may be removed as necessary to correct the deficiencies. The Canal Corporation's notion that safety requires the removal of trees on all earthen embankments is not supported by the history of the Erie Canal. Trees have been growing on the canal for a century, and the Canal Corporation has not identified any flood which has been caused by trees on the embankments. For these reasons, I oppose the clear-cutting.

6. Counsel for petitioners has just shown me portions of respondents' answering papers in this proceeding. These papers include a letter report, dated January 19, 2018, and is based on an inspection conducted on August 30, 2017. The inspection reportedly revealed several wet areas, cattails, a seep, and a minor inboard slope failure on the embankment site designated for clear-cutting which includes the property abutting mine, but which areas are not near my property. Goebel Aff. Exh. H. The letter report also recommends that the entire embankment site be given a Federal Emergency Management Area (FEMA) risk category of

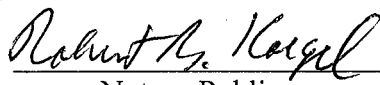
“Moderate Urgency,” and that the vegetation be removed on the entire embankment site. I have also seen a Canal Corporation interoffice memorandum, dated and effective February 19, 2018, declaring all of the embankments designated for clear-cutting within the Town of Perinton to be in a state of emergency requiring “the timely restoration of the Canal System to operational condition.” Goebel Aff. Exh. I.

7. I am aware of the condition of the canal embankment abutting my property. It does not contain any wet areas, cattails, seeps, or slope failures, and certainly none that are caused by the presence of trees. I would be happy if the Canal Corporation inspected its property abutting mine to confirm my observations, but in any event, the Canal Corporation does not need to cut down all of the trees abutting my property to inspect and address any such problems elsewhere.

8. I am also indignant about the Canal Corporation’s sitting on information for nearly 6 months before declaring an emergency. During all of this time, the Canal Corporation told the public that the clear-cutting was necessary to promote public safety, but it never said there was an emergency. Having failed to convince the public that work is necessary, the Canal Corporation declares an emergency, just days before the matter goes to court for judicial resolution. This is ridiculous.


Peter J. Schroth

Sworn to before me this 26th
day of February, 2018.


Notary Public

ROBERT B. KOEGEL
Notary Public, State of New York
No. 4900494
Qualified in Monroe County
Commission Expires June 22, 2019